The evolution of international water law and the ‘greening’ of water law

First International Environmental Forum for Basin Organizations
Towards Sustainable Freshwater Governance
Nairobi, Kenya – 27 November 2014
Focus on water use & development has led to:

- Water scarcity
- Water pollution

Human right to water

[ESCR Covenant, 1966]
GC 15 interpretation, 2002
UN Resolution, 2010
‘Greening’ of water law: a process

1. Consider the finite and vulnerable nature of freshwater & dependent ecosystems
2. Integrate environmental concerns in decision-making & regulatory measures
3. Reconcile socio-economic development and environmental protection
4. Balance health & protection of aquatic environment with society’s needs
Main ‘greening’ approaches

* Environment, species, humans are all water users (=)
  - Humans are part of the ecosystem (intrinsic value)
* Healthy ecosystems provide services to humans ($$$)
  - Humans are the ultimate water users (opportunistic)
* Which approach is more likely to work?
* **Main policy objective:** increase water allocation for the environment to ensure human health, safety & socio-economic development
Main Multilateral Environmental Agreements (MEAs)

- 1971 Ramsar Convention on Wetlands
- 1979 Bonn Convention on Migratory Species (CMS)
- 1992 Rio Convention on Biodiversity (CBD)
- 1992 New York Convention on Climate Change (UNFCCC)
- 1994 Paris Convention on Desertification (UNCCD)
- 1998 Rotterdam Convention on Hazardous Chemicals & Pesticides
- 2001 Stockholm Convention on Persistent Organic Pollutants (POP)
International water law: *international waters*

- **Aim:** Dispute prevention & settlement (2+ States)
- **Historically:** Surface water boundaries and allocation (navigation, flood control, irrigation & other uses)
- **Last century:** Water pollution, environmental & ecosystem protection, groundwater specificity ('90s)
- **International:** 1997 UN Watercourse Convention
- **Regional:** 1992 UNECE Conv. & 2000 SADC Protocol
- **Draft:** 2008 ILC Articles on Transboundary Aquifers
‘Green’ principles of int’l water law: established & emerging

1. **Equitable & reasonable utilization** (fair & sustainable)
2. **No significant harm** (eliminate/ mitigate/ compensate)
   * Pollution prevention, reduction and control (quality stds)
   * Transboundary environmental impact assessment (EIA)
3. **Ecosystem approach** (protect aquatic species/ habitats)
   * Minimum environmental flows (ecosystem integrity)
4. **Groundwater specificity** (vulnerability to pollution; aquifer recharge zone; effective functioning)
‘Green’ national water laws: *domestic waters*

- General environmental provisions (RSA 1998, Mali 2002)
- Environmental criteria in water permits (USA-Minnesota, Samoa 2008)
- Prioritization of water allocation for the environment (Mozambique 2007)
- Trade in water rights (Mexico 1992, USA-California)
- Minimum environmental flow (USA-Oregon 1987, Chile 2005)
- Aquifer safe yield (Namibia 2004, Tanzania 2009)
- EIA (Kenya 2002, Paraguay 2007)
- Payment for ecosystem services (Costa Rica 2005)
- Treated wastewater reuse (Israel 1981, Spain 2007)
- Groundwater protection (Australia-New South Wales 2000, EU 2006)
And now what?

... while continuing the ‘greening’ process
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Thank you!

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